XII-189 (Jail) C J.P.R.-9-94

CF0000060612

GA 1590/96

(2)

APPEAL OF PRISONER

Division Bench (Criminal)

No खास अपील क्र०- 93/96 Name हीरालाल.

Father's name तुमारास,

Residence मु०- सिरदा, पो०- पेंड्रा Age 30 वर्ष

Sentenced to आजीवन कारावास, on 26-8-96

Under Section 302 भा०द०वि० by VI- A.D.J. B.S.P.

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date on which copy received 26- 8- 96

3 Date on which Appeal sent NO-213 dated 31/8/96 Date-31-8-96

4 Whether the prisoner wishes to be represented or not.

No बंदी नम्बर- 1690/54 Name हीरालाल पि० तुमारास,

Confined in म० प्र० जिला - Jail बिलासपुर (म०प्र०)

No. 213 Dated 31- 8- 1996

Forwarded to the रजिस्ट्रार, उच्च न्यायालय म०प्र० जबलपुर।

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent
अधीक्षक
जिला जेल बिलासपुर

Date of receipt in Office

Date of receipt of record to accompany the Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

Date of receipt in Appellate court

(P. T. O.)

(28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No 1590/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ

15-2-2006

Smt. Savita Tiwari, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/ respondent.

Oral judgment dictated on *Dais*.

PER L.C. BHADOO J

The appellant has preferred this appeal under Section 374 (2) of the Cr.P.C. questioning the legality and correctness of the judgment of conviction and order of sentence dated 26-8-96 passed by learned 6th Additional Sessions Judge, in S.T. No.93/96 whereby learned Additional Sessions Judge after holding the accused/ appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

The case of the prosecution is that in the night of 21-1-96 when the accused/appellant demanded food from his wife Bela Bai (since deceased), on which Bela Bai could not provide food, therefore, the accused started assaulting Bela Bai with a wooden club, as a result of which she received 7 injuries. The right temporal bone was found fractured in number of pieces. There was also fracture in the left temporal bone, as a result of which brain membrane was also found ruptured on account of fracture in the skull bone. There was extradural haematoma. The matter was reported by Om Prakash Pandey (PW-5) to the police station Pendra on which F.I.R. Ex.-P/7 was registered. The investigating officer took up investigation, left for the scene

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of occurrence, after giving notice Ex.-P/3 to the Panchas, prepared Panchanama Ex.-P/4 of the dead body of deceased Bela Bai. The site plan Ex.-P/2 was prepared by Patwari. The blood stained soil and plain soil was taken into possession from the place of occurrence as also weapon of offence i.e. wooden club was also taken into possession under Ex.-P/5. The investigating officer prepared the site plan Ex.-P/6. The dead body of Bela Bai was sent for postmortem examination to the Community Health Centre, Gaurella where Dr. L.N. Patel (PW-8) conducted the postmortem on the dead body of deceased Bela Bai and prepared the postmortem report Ex.-P/16.

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate, 1st Class, Pendra Road, who in turn committed the case to the Sessions Judge, Bilaspur from where learned 6th Additional Sessions Judge received the case on transfer.

The prosecution in order to establish the charge against the accused/appellant examined 8 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence. After hearing Additional Public Prosecutor and counsel for the accused, learned trial Court convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

We have heard Smt. Savita Tiwari, learned counsel for the accused/appellant and Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

The homicidal death of deceased Bela Bai is not in dispute. Even otherwise, PW-8 Dr. L.N. Patel, who conducted the postmortem on the dead body of deceased Bela Bai, has stated that on 23-1-96 he conducted the

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postmortem and found as many as 7 injuries on various parts of the deceased. Both right and left temporal bones were fractured into pieces. The brain membrane was ruptured. There was extradural haematoma. Bela Bai died as a result of coma and asphyxia due to head injury and the death was homicidal in nature. In view of the above evidence, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, PW-7 Keshav is an eyewitness to the incident and he has stated that at 7 p.m. when he went to bring potato, he saw that the accused/appellant was assaulting his wife with a Lathi on temporal region. The lathi was a burning wood, as a result of which she fell down upon which he informed his employer Om Prakash Pandey, on which Om Prakash said that as to why he is assaulting his wife. Nothing has come in the cross-examination which makes the evidence of this witness unreliable or untrustworthy. Apart from that, on enquiry, the accused made extra judicial confession before PW-2 Ratiram, PW-3 Ram Sai and PW-4 Balaram. As per the medical evidence corresponding injuries were found on the head of the deceased, therefore, from the ocular evidence of PW-7 Keshav, the extra judicial confession made before the above witnesses based on the medical evidence, it is established that the accused/appellant was author of the crime in question.

Learned counsel for the accused/appellant argued that when the deceased did not provide food to the accused which enraged the accused, without any intention, all of a sudden, the accused picked up the burning wood and assaulted his wife with the same, therefore, the offence against the accused does not travel beyond Section 304-II of the I.P.C..

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand, Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer supported the trial Court judgment.

In order to appreciate the argument advanced by learned counsel for the appellant, if we look into the postmortem report Ex.-P/16 and evidence of PW-8 Dr. L.N. Patel, as many as 7 injuries were inflicted on the vital parts of the deceased i.e. head and face as a result of assault by burning wood. Both right and left temporal bones were fractured into pieces and resultantly, brain membrane was ruptured. There was extradural haematoma. Therefore, looking to the nature of injuries, weapon of offence and the place where injuries were inflicted, it is evident that the accused/appellant assaulted the deceased mercilessly. He did not stop after assaulting once and he caused as many as 7 injuries. Even skull bone was fractured into pieces, therefore, the accused has acted in a cruel and unusual manner, same disentitles him for the benefit of Exception 4 to Section 300 of the I.P.C. Therefore, we do not find any illegality or infirmity in the judgment of the trial Court.

In the result, the appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Consequently, M.(Cr.)P. Nos.1768/2001, 1948/2002, I.A. Nos.805/2001 and 3430/2002 also stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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